IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9136 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNA H. RAO

Versus

SHETH V.S. GENERAL HOSPITAL & SHETH CHINAI MATERNITY HOSPITA

Appearance:

1. Special Civil Application No. 9136 of 2002

MR RJ GOSWAMI for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 17/09/2002

ORAL JUDGEMENT

1. Yesterday this matter was already heard, but

since the admission process was to be finalised yesterday, the operative portion of the order was dictated by the Court. Today the reasons are recorded and they are as under:

1.1 The short facts of the case are that the petitioner is a person residing outside the corporation limits of Ahmedabad and is rather staying in the area of Ahmedabad Urban Development Authority (AUDA). The petitioner has passed 12th (HSC) Standard Science Stream in the year 1999 from Shree Sharada Higher Secondary School, Memnagar, which is situated in AUDA area. The petitioner thereafter got admission in B.Sc. in Microbiology in M.G.Science College, Ahmedabad, which is situated in the corporation area and ultimately the petitioner has passed B.Sc. in Microbiology from M.G.Science College, Ahmedabad in the year 2002. In July, 2002, the petitioner filled up form for getting admission for Post Graduation course in Medical Laboratory Technician, which is run by respondent No.1 and along with the application, the petitioner also submitted School Leaving Certificate and the mark-sheet of 12th (HSC) Standard. The petitioner was called for interview on 11-9-2002 and at that time, the petitioner was told that since the petitioner has not passed 12th (HSC) Standard Examinations from the school situated within the corporation limits, the petitioner would not be considered for the purpose of admission in the course in question. Hence this petition.

2. This Court had issued notice pursuant to which the respondents have appeared and the main contention of the respondents is that the Rules of admission and more particularly Rule 3 provides that the admission will be given to the local students only and the local student means student, who has passed 12th (HSC) Standard and B.Sc. from any High School and College situated within the limits of Ahmedabad Municipal Corporation. Rule 3, for the sake of convenience, is reproduced as under:

> "3. Admission will be given to local students only. Local students mean students who has passed Higher Secondary Examination & B.Sc. Examination from any of the High School and colleges situated within Ahmedabad Municipal Corporation limits."

Only on that short condition the respondents have denied the admission or have rather declined the petitioner to consider for the purpose of admission and the same calls for consideration by this Court.

3. Both the sides have relied upon the judgement of the Apex Court in the case of "Ahmedabad Municipal Corporation and Another Vs. Nilaybhai R. Thakore and Another", reported in (1999) 8 SCC, 139. The contention of the petitioner by putting reliance on the said judgement is that the Apex Court has read the Rules by interpreting Rule 7 of the said Rules that the object of the rule is to provide medical and other courses to the students of Ahmedabad and that "local student" means a student who has passed SSC/New SSC Examinations and the qualifying examinations from any of the High School or College situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident students of Ahmedabad Municipal Corporation, who acquire the above qualifications from any of the High School or College situated within the Ahmedabad Urban Development Authority area and, therefore, it has been submitted on behalf of the petitioner that since the petitioner has passed 12th (HSC) Standard examinations from High School situated within AUDA area, it should be treated as sufficient compliance for the purpose of eligibility criteria for getting admission for the course in question.

4. On behalf of the respondents, it has been submitted that in view of the very judgement in the case of "Ahmedabad Municipal Corporation" (supra), the observations of the Apex Court are that the object of the Rule is to provide medical education to the students in that case and in the present case it is for the course of medical laboratory technicians to the students of Ahmedabad, who have acquired the necessary qualification. The respondents have pressed in service the observations made by the Apex Court in the aforesaid judgement at para 14 to canvass the contentions that the intention is to provide education to the local students and it has also been submitted that even if the interpretation as read by the Apex Court is considered, the students can claim the benefit only if they are permanent residents of Ahmedabad Municipal Corporation and have acquired qualification from any High School or College situated within the limits of AUDA. It has also been submitted on behalf of the respondents that the present course is for Medical Laboratory Technician and it is a private course of one year. The said course is financed by the Corporation under the scheme of self-finance and the same is not conferring any degree or diploma upon the person(s) concerned. It is also not valid in any University and, therefore, it has been submitted that the Corporation has a right to manage and regulate the eligibility procedure

of its own and it has been submitted that the Rule, as it is, is based on the reasonable classification and hence the petitioner is not eligible and, therefore, he is rightly kept out of the zone of consideration. It has also been submitted during the course of the argument that the petitioner has claimed admission in SEBC category, but he has not produced necessary certificate and, he has also not produced necessary certificate to prove that he is falling in the non-creamy layer category. Mr.Goswami for the petitioner submitted that the necessary certificates were produced by the petitioner at the time when the application was made and the petitioner is ready to produce the same again, if required. However, the said aspect is not the subject matter of the petition and, therefore, this Court is not required to examine the same.

5. Before I examine the validity of Rule, it must be noted that in the case of "Unnikrishnan Vs. State of Andhra Pradesh", reported in 1993 (Vol.1) SCC, 645, the Apex Court has settled the position that right to have the education is a fundamental right of citizen and, therefore, the arguments advanced will have to be tested from that angle. The Apex Court in the case of "Ahmedabad Municipal Corporation" (supra) at para 10 has observed as under:

> "10. But the question in this case is slightly different from the law laid down in the above-cited cases. Under Rule 7 of the impugned rules, "a local student" is defined as a student who has passed SSC/New SSC Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad municipal limits. As per this rule, it is only those students who qualify from educational institutions situated within the municipal limits who will be eligible to be treated as local students. While the permanent resident students of Ahmedbad city who for fortuitous reasons, as stated above, happen to acquire qualification from educational institutions situated just outside the municipal limits, namely, AUDA, will not be eligible for being treated as local students. The object of the rule is to provide medical education to the students of Ahmedabad who have acquired the necessary qualification, their selection being based on merit. If that be the object, can it be said that a classification based only on the location of the educational institution within or outside the municipal area

> is a reasonable classification? In our opinion, the answer should be in the negative. In the counter-affidavit filed on behalf of the Ahmedabad Municipality in the writ petition, it is stated that the Medical College in question was established to cater to the needs of the students of Ahmedabad city. If that be the object, in our opinion, the same would be defeated by restricting the definition of "local student" to those students who have acquired their qualification from institutions situated within the Ahmedabad municipal area, because as has happened in this case, the actual resident students of the Municipality whose parents would have contributed towards the revenue of the Ahmedabad Municipality who for reasons beyond their control or otherwise, had acquired their qualification from institutions situated just outside the Ahmedabad municipal area i.e. within AUDA, would be denied the benefit of admission to the College which is run by the Ahmedabad Municipality. In our opinion, confining the definition of "local student" to only those students who acquired the qualification from educational institutions situated within the local area creates an artificial distinction from amongst the students who are residents of Ahmedabad city and those who may not be the residents of Ahmedabad city but who have studied in educational institutions situated in the Ahmedabad Municipal Corporation limits. We do not find any nexus in this type of classification with the object to be achieved. Let us test the logic of this rule with reference to a permanent resident of Ahmedabad who resides within the Ahmedabad municipal limits but is employed within AUDA. Can the Municipality refuse the benefit of its services to such a resident of the city only on the ground that he is employed in AUDA? The answer again can only be NO. Similarly, if the object of the rule is to provide medical education to the students of Ahmedabad because of its municipal obligations then a differentia within the class of students of Ahmedabad on the basis of their acquiring qualifications from schools within the Ahmedabad municipal limits or within the limits of AUDA would be arbitrary and violative of Article 14."

6. In view of the above, it is clear that the Apex Court, in turn, has negatived the manner and method of

classification by the Corporation between the students of an educational institution within or outside the municipal corporation. It has also, in turn, negatived the classification made by the Ahmedabad Municipal Corporation to refuse the benefits of service to the residents of the city only on the ground that he was employed in AUDA. The concluding observations made by the Apex Court, in turn, says that if the object of the rule is to provide medical education to the students of Ahmedabad because of its municipal obligations then a differentia within the class of students of Ahmedabad on the basis of their acquiring qualifications from schools within the Ahmedabad municipal limits or within the limits of AUDA would be arbitrary and violative of Article 14. Therefore, it is clear that the Corporation cannot deprive the students from getting admission on the ground that he has passed 12th (HSC) examinations from a school situated outside Corporation area but within the AUDA limits. There is no dispute on the point that the petitioner has passed the 12th (HSC) examinations from a school situated within AUDA limits.

7. It will be relevant to refer to the recent decision of the Apex Court in the case of "Kailash Chand Sharma Vs. State of Rajasthan and Ors." reported in (2002) 6 SCC, 562, where the State Government had formed a policy of adding bonus marks on the ground that a person is residing in the rural area. The Apex Court, at para 14, has observed, inter alia, that Article 16 which is under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. The observations are that the Parliament has the power to make a law for making reasonable classification and It has been further observed that the State can form policy but such policy must meet with the requirements of Articles 14 and 16 of the Constitution. At the concluding observation of Apex Court at para 48, it has been observed as under:

> "48. Another parting observation. While we realize the need to generate better employment opportunities to the people or rural backward areas and an affirmative action in this regard is not ruled out, any such action should be within the framework of constitutional provisions relating to equality. Equalising unequals by taking note of their handicaps and limitations is

not impermissible under the Constitution provided that it seeks to achieve the goal of promoting overall equality. However, measures taken by the State on considerations of localism are not sanctioned by the constitutional mandate of equality."

8. In the present case, the Rules are not by way of statutory enactment and they are only by way of instructions for the purpose of governing the eligibility criteria of admission. Even if these Rules are taken as the subordinate legislation, then also they are not the laws made by the State, nor are they the laws made by the Parliament. In my view, the rules cannot nullify the constitutional mandate and further as such there is a lack of authority on the part of the Corporation to frame such rules so as to discriminate the students on the ground of localism. The said aspect is coupled with the fact that in the case of "Ahmedabad Municipal Corporation" (supra), the Apex Court has also found that there is no reasonable classification between students or residents staying in Ahmedabad Municipal Corporation or institutions situated within the limits of Ahmedabad Municipal Corporation or AUDA area. It is true that the Apex Court while maintaining the rules, read down the said rule with a view to see that the floodgate is not opened and the admission process is not resulted into as open to all the students of the Country and, therefore, with a view to see that the proper balance is struck, the Apex Court read down the rules.

9. In my view, even if the rule 3 is maintained, the interpretation of the same is required to be made so as to see that the interpretation is given in the spirit as it was sought to be conveyed by the Apex Court in the above referred judgement in the case of "Ahmedabad Municipal Corporation" (supra) and the judgement in case of "Kailash Chand Sharma" (supra). Therefore, instead of striking down the rules, I am of the opinion that rules must be read so as to make rooms for students who have passed HSC examinations from the Institutions situated within the limits of AUDA also. Therefore, in my view the Rule 3 should be interpreted as under:

"Admission will be given to the local students only. Local students mean students who have passed Higher Secondary Examinations and B.Sc. Examinations from any High School and College situated within the Ahmedabad Municipal Corporation limits and also the limits of Ahmedabad Urban Development Authority area."

10. In view of the above, the petition succeeds. The petitioner would be entitled to be considered for the purpose of admission to course of post graduation in medical laboratory technician and, therefore, the respondent authorities are directed to consider the case of the petitioner as eligible for the grant of admission in post graduate course of Medical Laboratory Technician on the basis of inter se merit. Petition is allowed accordingly. Rule is made absolute. No costs. Office is directed to forward the operative portion of the order. In addition, Mr.Munshaw will communicate the order to the authorities concerned.

17-9-2002 (Jayant Patel, J.)

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